

Primer on Worker Rights Protections in Trade Agreements With Latin America: 1.0, 2.0, and 3.0.

USLEAP believes that a critical condition for achieving sustainable advances for worker rights in Latin America is the inclusion of enforceable, effective worker rights in international trade and other agreements. Such provisions are also critical for U.S. workers who in a global economy will face a never-ending race to the bottom in the absence of workers abroad being able to organize to raise wages and working conditions.

Latin America has become a key testing ground for labor provisions in U.S. trade agreements, with a modest but potentially important progression in the labor provisions of the North American Free Trade Agreement (NAFTA, implemented in 1994), the Central American Free Trade Agreement (CAFTA, which also includes the Dominican Republic, implemented in 2006-07), and a new set of Bush-era agreements with Peru (implemented in 2009), Panama and Colombia, the latter two passed in October 2011 but not yet in force.

NAFTA's labor protections [1.0] are contained in a "side agreement," require adherence only to domestic law, and effectively limit remedies for violations to fines against the offending government. Violations subject to sanction are limited to violations of child labor, minimum wage and health and safety violations; sanctions are not an option for violations of core worker rights like freedom of association and right to collective bargaining.

CAFTA's labor protections [2.0] are incorporated into the text of the agreement, an advance over NAFTA, but CAFTA, like NAFTA, only requires adherence to domestic labor law, no matter how short of international standards it may be. Sanctions are no longer limited to child labor, minimum wage and health and safety violations but violations of worker rights are treated as less important than violations of, say, intellectual property rights. The ultimate sanction for violations of worker (and environmental) rights is a fine while other violations can result in the more stringent penalty of lost trade benefits. The fine would be paid by the offending government, to be used, most likely, for improved labor law enforcement.

A third incarnation of labor protections [3.0] is incorporated into the four agreements (Colombia, Panama, South Korea, and Peru) subject to a May 2007 accord between the Bush Administration and Congressional Democrats. The May 2007 accord on labor protections is a significant advance over CAFTA and NAFTA because it requires compliance with international standards (specifically, the International Labor Organization's Declaration on Fundamental Principles and Rights at Work), adds discrimination to the list of protected worker rights, and provides equivalency in terms of dispute resolution and remedies, i.e. violations of worker rights are given equivalency in terms of sanctions and procedure as violations of intellectual property rights, e.g. subject to loss of trade benefits, although offending governments have latitude to opt for a fine instead.

The basic process is the same for all: a party (normally a union) files a labor complaint, if it is found to have sufficient merit, the complaint is investigated, and then the governments seek a resolution of any identified violations. If concerns are not resolved according to the satisfaction of the government which received the complaint, it can request formal consultations with the offending government. If consultations are not satisfactory, the next step is convening an arbitral panel that would impose a sanction depending on the agreement and the violation, a fine or suspension of trade benefits equivalent to the assessed damage of the violation.